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10 UNITED STATES DISTRICT COURT
11 SOUTHERN DISTRICT OF CALIFORNIA
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13 PAUL ALBERT GUARDADO,

14 Petitioner,

15 v.

16 GEORGE A. NEOTTI,

17 Respondent.
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CASE NO: 09-CV-2913 W (RBB)

**ORDER GRANTING MOTION TO
PROCEED IN FORMA PAUPERIS
[DOC. 36]**

20 Pending before the Court is Petitioner Paul Albert Guardado's motion for
21 leave to proceed in forma forma pauperis ("IFP") on appeal. For the following
22 reasons, the Court will grant the motion.

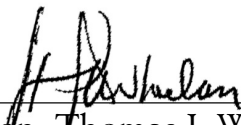
23 A party seeking to proceed IFP on appeal must file a motion in the district
24 court. See Fed R. App. P. 24(a)(1). The determination of whether a plaintiff is
25 indigent, and thus unable to pay the filing fee falls within the district court's
26 discretion. California Men's Colony v. Rowland, 939 F.2d 854, 858 (9th Cir. 1991),
27 *reversed on other grounds*, 506 U.S. 194 (1993) ("Section 1915 typically requires the
28 reviewing court to exercise its sound discretion in determining whether the affiant

1 has satisfied the statute's requirement of indigency."). It is well-settled that a party
2 need not be completely destitute to proceed IFP. Adkins v. E.I. DuPont de
3 Nemours & Co., 335 U.S. 331, 339-40 (1948). To satisfy the requirements of IFP
4 status, "an affidavit [of poverty] is sufficient which states that one cannot because of
5 his poverty pay or give security for costs . . . and still be able to provide himself and
6 dependents with the necessities of life." Id. at 339. At the same time, however, "the
7 same even-handed care must be employed to assure that federal funds are not
8 squandered to underwrite, at public expense, . . . the remonstrances of a suitor who
9 is financially able, in whole or in material part, to pull his own oar." Temple v.
10 Ellerthorpe, 586 F.Supp. 848, 850 (D.R.I. 1984).

11 Having read and considered the papers submitted, the Court finds that
12 Petitioner has demonstrated that he is unable to pay the fees or post securities
13 required to pursue his appeal. According to his declaration, Petitioner receives
14 approximately \$25 a month income from his prison job. He receives no other
15 income. And his CDCR Inmate Statement Report (Doc. 37) establishes that his
16 account balance as of January 6, 2012 was \$59.50. For these reasons, the Court
17 **GRANTS** Plaintiff's motion to proceed IFP on appeal. (Doc. 36.)

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19 **IT IS SO ORDERED.**

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21 DATED: February 29, 2012

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24 Hon. Thomas J. Whelan
25 United States District Judge
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